

48A C.J.S. Judges § 221

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VIII. Liabilities

A. General Considerations

§ 221. Actions—Pleadings and evidence

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  36, 37

General rules of pleading and evidence ordinarily apply in actions to enforce the civil liability of a judge or the sureties on an official bond.

In actions to enforce the civil liabilities of judges or their sureties, general rules govern the pleadings,¹ and if the action is brought in equity, facts sufficient to state a cause cognizable in equity must be stated.² The complaint must allege that the judge acted wholly outside his or her jurisdiction³ so that if the act complained of is a judicial one, and within the jurisdiction of the judge, no allegation of malice, corruption, oppression, tyranny, or want of just or probable cause will operate to make the complaint sufficient.⁴

The judge's pleadings, setting forth matter which constitutes a defense to the action, should not be dismissed on demurrer as the judge is entitled to an opportunity to establish such matter.⁵

Evidence.

In actions to enforce the civil liability of judges or their sureties, the general rules of evidence with respect to presumptions and burden of proof,⁶ admissibility,⁷ and weight and sufficiency⁸ of the evidence govern.

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Footnotes

- 1 Ala.—*Culver v. Sparkman*, 25 Ala. App. 544, 149 So. 877 (1933).

N.J.—*Prudential Ins. Co. of America v. Clifton Builders Supply Co.*, 109 N.J. Eq. 349, 157 A. 443 (Ch. 1931).
- 2 Ala.—*Wilbanks v. Mitchell*, 237 Ala. 3, 184 So. 894 (1938).
- 3 U.S.—*Johnson v. MacCoy*, 278 F.2d 37 (9th Cir. 1960).

Vt.—*LaPlaca v. Lowery*, 134 Vt. 56, 349 A.2d 235 (1975).
- 4 U.S.—*Barnes v. Dorsey*, 480 F.2d 1057 (8th Cir. 1973).

Wis.—*Abdella v. Catlin*, 79 Wis. 2d 270, 255 N.W.2d 516 (1977).
- 5 Ky.—*Langston v. Kelly*, 272 Ky. 109, 113 S.W.2d 471 (1938).
- 6 Ky.—*Rockcastle County v. Bowman*, 274 Ky. 787, 120 S.W.2d 385 (1938).
- 7 Tex.—*Heyn v. Massachusetts Bonding & Insurance Co.*, 110 S.W.2d 261 (Tex. Civ. App. Dallas 1937), writ dismissed w.o.j., (Jan. 12, 1938).
- 8 S.C.—*Greenville News-Piedmont Co. v. U.S. Fidelity & Guar. Co.*, 169 S.C. 188, 168 S.E. 396 (1933).